ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Option,	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

VANGUARD CELLULAR SYSTEMS, INC.

Raymond G. Bender, Jr.
J.G. Harrington
Laura S. Roecklein

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

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SUMMARY

Vanguard supports the Commission's initiative in the Calling Party Pays NOI and urges the Commission to work towards implementing a national CPP regime for CMRS providers. As evidenced by the use of CPP throughout the world, the CPP service option advances local exchange competition by increasing the number of calls to cellular subscribers and increasing the overall use in the network. The availability of CPP will offer consumers lower prices and more choice in the telecommunications marketplace and several steps must be taken by the Commission before CPP can be effectively implemented.

First, successful implementation of CPP depends on the availability of effective billing and collection mechanisms. Because billing and collection is vital to the development of CPP and because efficient billing is not available from other sources, the Commission should require ILECs to provide billing and collection for the provisioning of CPP services by CMRS providers on non-discriminatory terms and conditions. Coupled with the complexity of CMRS billing, the high costs associated with wireless providers billing landline customers make adoption of a uniform national billing mechanism appropriate.

Moreover, the Commission should use its authority under the Communications Act to adopt nationwide rules for CPP. Permitting states to impose a patchwork of varying regulations is inconsistent with the mobile, interstate nature of CPP. Individual state regulations also would create significant, likely insurmountable practical barriers to providing CPP, especially for providers operating multistate systems, including Vanguard. Thus, without a nationwide CPP regime in place CMRS providers will not be able to provide CPP service in most, if not all, of their service areas.

It is also appropriate for the Commission to require the CMRS provider to notify callers that a charge will apply. The notification provided to the calling party initially should be a "branding message" that will provide callers with the flexibility of choosing whether or not to complete calls. Because CMRS providers often have differing rate plans for various service offerings, however, wireless providers are unable to provide the cost of each and every call to each and every calling party. CMRS providers therefore should not be required to provide callers with the exact charges associated with a particular call.

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Vanguard Cellular Systems, Inc. ("Vanguard") by its attorneys, hereby submits its comments in the above-referenced proceeding.[1/] As shown below, the Commission should take the steps necessary to make calling party pays ("CPP") service widely available as soon as possible, including adopting a notice of proposed rulemaking in this proceeding.

I. INTRODUCTION

On October 23, 1997, the Commission initiated a Notice of Inquiry seeking information regarding CPP, a service option currently offered by some Commercial Mobile Radio Service ("CMRS") providers.[2/] In recognition of the CPP offerings that already are offered by CMRS providers, as well as the need to encourage and facilitate competition in the local exchange market place, the Commission is exploring the subject of CPP to determine whether wider availability of CPP will enable CMRS providers to compete more readily with local exchange

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1/ In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, WT Docket No. 97-207, FCC 97-341 (rel. October 23, 1997) (NOI).

2/ CPP means that the "party who places the call pays for the call." *See* CTIA Service Report, *The Who, What and Why of "Calling Party Pays,"* July 4, 1997 at 9 (*CTIA White Paper*).

carrier ("LEC") services. To this end, the Commission notes that it "is committed to taking necessary actions to increase consumer options for local service" and requests comment on steps the Commission could take to promote the availability of CPP for CMRS.[3/]

Vanguard is a major independent cellular carrier, serving more than 645,000 customers in 29 cellular MSAs and RSAs in 10 states. With facilities, including switches, in place, Vanguard could be a competitor to ILECs in their service territories. As a facilities-based provider of wireless telecommunications services, Vanguard thus shares in the Commission's desire to facilitate local exchange competition. Vanguard believes that the availability of CPP will offer consumers lower prices and more choice in the telecommunications marketplace. Consequently, Vanguard offers these comments in support of the Commission's initiative to pursue CPP as a CMRS service option.

II. THE DEVELOPMENT OF CPP DEPENDS ON THE AVAILABILITY OF A NATIONAL BILLING AND COLLECTION REGIME

Billing and collection is critical to the development of CPP. Without a seamless and relatively inexpensive billing mechanism in place, CPP will not be a success for the public in the United States. While wireless providers can take many of the steps necessary to offer CPP, billing and collection services provide a vital link to the customers who make CPP calls. Simply put, without billing and collection, CMRS providers will be unable to obtain revenue for the services they provide. For that reason, ILECs should be required to provide billing and

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3/ NOI at ¶ 1.

collection for the provisioning of CPP services by CMRS providers on non-discriminatory terms and conditions that are at least as favorable as those available to their affiliates.

Indeed, requiring non-discriminatory access to billing and collection is consistent with other recent Commission decisions. Section 272(c)(1), for example, prohibits a BOC from discriminating in favor of its affiliates in the provision of goods, services, facilities, and information, or in the establishment of information.[4/] The Commission has interpreted the meaning of "goods, services, facilities and information" broadly, concluding that:

> We find that neither the terms of section 272(c)(1), nor the legislative history of this provision, indicates that the terms "goods, services, facilities, and information" should be limited in the manner suggested by some commenters. We therefore decline to interpret the terms in section 272(c)(1) as including only telecommunications-related or, even more specifically, common carrier-related "goods, services, facilities, and information." Similarly, we reject arguments . . . that the term "services" should exclude administrative and support services. . . . [W]e find that there are certain administrative services, such as *billing and collection services* that unaffiliated entities may find useful.[5/]

4/ 47 U.S.C. § 271(c)(1). *See also* Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, *Second Order on Reconsideration*, CC Docket No. 96-149, FCC 97-222 (rel. June 24, 1997). Section 272(e)(2) further provides that a "Bell operating company and an affiliate that is subject to section 251(c), . . . shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions." 47 U.S.C. § 272(e)(2).

5/ Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 21905, 22007-08 (rel. Dec. 24, 1996) (emphasis added).

The Commission also concluded that the terms "services," "facilities" and "information" should be interpreted to include the meaning of the terms in section 251(c) relating to unbundled network elements.[6/]

Under section 251, all local exchange carriers are required to provide "to any telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[7/] As the Commission notes in the NOI, "we have made clear, in the *Local Competition First Report and Order*, that incumbent LECs have an obligation to provide access to unbundled network elements. and that such network elements include information sufficient to enable recipients of unbundled network elements to provide billing services."[8/] Specifically, in the *Local Competition First Report and Order*, the Commission stated that

> We concluded that the definition of the term "network element" broadly includes all "facilit[ies] or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for *billing and collection* or used in the transmission, routing, or other provision of a telecommunications service [. . . .]" The definition . . . includes information that incumbent LECs use to provide telecommunications services

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6/ 11 FCC Rcd at 22008.

7/ 47 U.S.C. § 251(c)(3).

8/ NOI at ¶ 28

commercially, such as information required for pre-ordering, ordering, provisioning, *billing* and maintenance and repair services.[9/]

Taken together, the requirement that BOCs must provide billing and collection services in a non-discriminatory fashion and the requirements of section 251(c) of the Act demonstrate that the Commission has the authority to ensure that ILECs provide CMRS carriers with nondiscriminatory access to their billing and collection services.[10/]

The Commission should use its authority to adopt national billing standards for CPP. Absent such standards, the intricacy of individual negotiations could delay the roll-out of CPP significantly.[11/] In addition to the sheer complexity involved with CMRS billing (due in part to the mobility of the service and roaming), the costs associated with wireless providers billing landline customers make adoption of a uniform national billing mechanism even more appropriate.[12/] Because the LECs have little incentive to voluntarily enter into a reasonably

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9/ Local Competition, *First Report and Order*, 11 FCC Rcd 15499 ¶262 (1996) (emphasis added).

10/ Notably, given the inherently interstate nature of CMRS, the Commission could adopt national billing standards for CPP pursuant to its authority over interstate communications under Title I. *See, e.g.*, Detariffing of Billing and Collection Service, 102 F.C.C. 2d 1150, 1169 (1986) ("*Billing Detariffing Order*") (noting that the Commission's Title I powers would allow regulation of exchange carrier provision of billing and collection services to interexchange carriers).

11/ CTIA suggests that "billing arrangements can be reached through negotiations patterned on the IXC-LEC model." *CTIA White Paper* at 14. Vanguard suggests that negotiating for billing and collection services will prove painstakingly slow. It has taken Vanguard alone over fifteen months from its initial requests for agreements to negotiate or arbitrate twelve different interconnection agreements with thirteen LECs, with two arbitrations still ongoing.

12/ The costs to the ILEC, *i.e.*, the cost to add something onto their bills, are nominal as compared to the costs to cellular carriers to send separate stand-alone bills.

priced fee arrangement for billing and collection, the result will be either artificially high billing rates, excessive costs from independent billing, or unacceptable leakage problems.[13/]

The Commission also should recognize that the circumstances that allowed it to adopt the *Billing Detariffing Order* do not apply to CPP. In particular, the *Billing Detariffing Order* depended on the wide availability of alternative billing vendors.[14/] As described above, wireless providers have few, if any, practical alternatives to LEC billing of CPP calls. In other words, without a national standard in place, the ability to implement CPP is put right into the hands of the ILECs – the same entities that currently maintain a monopoly over local calls. Such a scenario would make CPP unworkable.

III. CPP WILL BE BENEFICIAL TO CONSUMERS AND THE WIRELESS INDUSTRY

The NOI requests comment on whether CPP promotes more balanced traffic flows and increased demand for CMRS services.[15/] While there is little empirical experience with CPP in the U.S., there is considerable experience in other nations. Indeed, based on the international experience, it is evident that the CPP service offering does, in fact, stimulate demand, results in more balanced traffic flows and makes CMRS more competitive with landline services.

13/ Self-interest likely will prevent the ILECs from voluntarily assisting their affiliates as well, because they will be required to make billing available to other parties if they make it available to their wireless affiliates.

14/ *Billing Detariffing Order*, 102 F.C.C. 2d at 1170.

15/ NOI at ¶ 10.

For instance, CPP has contributed greatly to the dramatic increase in mobile phone use in Israel over the past few years. As *Wired* magazine explained earlier this year, "[t]his system [of CPP], coupled with cheap user rates, may have put Israel over the top in wireless expansionism. With costly nuisance calls eliminated, subscribers could hand out their numbers freely. Many have since placed their cellular numbers on business cards. Others have posted them in newspaper ads. *Some have dispensed with their home phones entirely.*"[16/] As CTIA recently noted in its *White Paper*, this increase in cellular phone use has "essentially balanced [the average monthly traffic] between incoming and outgoing calls."[17/] Indeed, Israel has the highest volume of cellular calling in the world.[18/] Although the NOI suggests that the balance in traffic flows resulting in increased demand for CMRS services may be due to the fact that "wireless service may be more desirable in these countries because the wireline network may be inferior in quality or less accessible," this rationale does not apply in Israel, where the quality of landline service is good.[19/]

Israel is not the only country in which CPP has resulted in increased and more balanced wireless traffic. As recently noted by CTIA, Sweden also boasts balanced traffic under its CPP

16/ Sheldon Teitelbaum, *Cellular Obsession*, WIRED, Jan. 1997, at 147 (emphasis added).

17/ *CTIA White Paper* at 9.

18/ Teitelbaum, *supra* note 5, at 147.

19/ In fact, following the Israel Communications Ministry's 1984 decision to privatize the country's telephone provider, Israelis have found themselves with premium telephone services "either not available in most countries or available only for additional costs." *Id.* at 194.

regime.[20/] Under the Swedish CPP model, subscribers keep their cellular phones turned on and available to receive calls. This experience is repeated in other countries that have implemented CPP, in each case experiencing a vast increase in wireless usage coupled with a balancing of traffic flows. In Italy, Brazil and the United Kingdom, usage is significantly higher and traffic is significantly more balanced than traditionally has been the case in the U.S.[21/] One key characteristic of the successful CPP regimes in each of these countries is that they are national in scope. Wireless providers are not required to comply with varying requirements of provincial regulators, so they can offer their CPP services consistently across service areas. As a result, the CPP service is more easily understood by both landline and wireless customers and easier to use on a consistent basis.[22/]

As evidenced by the implementation of CPP overseas, CPP encourages consumers to distribute their phone numbers more widely and keep their cellular phones turned on, resulting in more total calls to cellular subscribers and an overall increase in the use of the network. Implementing CPP in the United States thus would have the effect of increasing competition in the local exchange by allowing more economic use of the network and providing greater incentives for CMRS providers to invest in network build-out. As recently noted by one wireless

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20/ *CTIA White Paper* at 10.

21/ *CTIA White Paper* at 9.

22/ An inconsistent patchwork of state regulations will likely jeopardize the implementation of CPP because customers will be hesitant to use a service that may not be provided by their desired carrier. As in the case of payphone use, for instance, customers became hesitant to use pay telephones because they were often charged inflated rates by unfamiliar carriers.

carrier, "CPP, when associated with two-way services, offers the potential of reducing the mobile subscriber'[sic] bills, which may result in more wireless subscribers."[23/] This increase in the number of cellular subscribers ultimately provides consumers with lower prices, more choices, and an economical substitute for landline service. As has been the case in Israel, widespread availability of CPP will allow customers to use CMRS service not only to provide mobility, but as a substitute for landline service.[24/]

IV. THE COMMISSION SHOULD ADOPT REASONABLE, NATIONAL CONSUMER PROTECTION RULES

The NOI notes that there are consumer protection issues related to informing callers that they will be charged for placing a call to a wireless phone.[25/] These issues can and should be addressed by the Commission. As shown below, it is appropriate to require the CMRS provider to notify callers that a charge will apply, but specific cost information need not be made available.

First, caller notification should be the responsibility of the wireless provider. Because the wireless provider will be responsible for providing the CPP service, the wireless provider

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23/ Comments of FreePage Corporation, WT Docket No. 97-207 at ¶ 8 (filed Nov. 7, 1997) (*FreePage Comments*).

24/ The reluctance of LECs to cooperate with wireless CPP deployment in the United States historically has prevented CPP deployment in the U.S. Europe, in comparison, has provided a much more benign environment for CPP than the U.S. Thus, the cellular industry in the United States has been deprived of revenues and consumers have been denied the choice of CPP.

25/ NOI at ¶ 20.

also should be responsible for informing the calling party that charges will result if the call is completed. Notification by the wireless provider also is beneficial because the impacts of CPP on originating carriers will be minimized. In addition, so long as wireless carriers provide notification, it should not be necessary to set aside specific numbering resources for CPP.

The notification provided to the calling party should initially be a "branding message" that informs the caller that charges will apply and allows the caller to choose whether to complete the call.[26/] A branding mechanism will provide callers with the flexibility of choosing whether or not to complete calls. The branding message will serve the same function as "1+" dialing requirements for toll calls by informing them that there will be a charge.

CMRS providers should *not*, however, be required to provide callers with the exact charges associated with a particular call. Because CMRS providers often have different rate plans for different service offerings, it would be virtually impossible for a provider to estimate the cost of each and every call to each and every calling party. Moreover, the Commission never has required post-dialing notification of actual charges for any telecommunications service, even when the caller does not have a pre-existing relationship with the service provider.[27/]

26/ *See, e.g., CTIA White Paper* at 16 (noting that one carrier's CPP service brochures state that when a caller dials the number of a CPP subscriber, they will hear a customized announcement notifying them of charges and allowing the option of completing the call or hanging up to avoid incurring charges).

27/ In this respect, telecommunications services are distinguishable from information service subject to the Telephone Disclosure and Dispute Resolution Act ("TDDRA") and the protective measures imposed by the Commission in the early 1990s to address complaints about pay-per-call services. *See* Policies and Rules Concerning Interstate 900 Telecommunications Services, *Report and Order*, 6 FCC Rcd 6166 (1991), *Order on Reconsideration*, 8 FCC Rcd 2343 (1993). Among the measures imposed by the Commission was a preamble message

Deployment of SS7 technology will allow CMRS carriers to determine when it is appropriate to apply the message. SS7 allows carriers to achieve and manage interconnection on a standard basis and significantly speeds call setup and call completion processes. SS7 already permits wireless providers to offer enhanced customer calling features, *e.g.*, caller ID, selective ringing (or priority ringing), selective call forwarding, call blocking, repeat dialing, call trace and automatic call-back.[28/] SS7 also will enable the wireless provider to decide whether or not to apply the charge to the caller.

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disclosing the cost of the services and affording the consumer the opportunity to terminate the call prior to incurring charges. Because, however, CPP services constitute transmission services rather than information services (*e.g.,* pay-per-call services), the justification for the rigid preamble requirement used for 900 services is absent. Similarly, because pay-per-call services consist of a number of callers calling a single number, it is relatively simple for pay-per-call providers to asses the exact charge of the call. Unlike the CPP service option, there are no varying rate plans or mobility issues with pay-per-call services that affect the costs of a particular call. In the case of CPP it is not possible to provide the caller with a recorded message describing the exact charges for each and every wireless call. In addition, with CPP the potential for abuse of the calling party is far less than with pay-per-call services where pay-per-call providers often ballooned rates far higher than the actual transmission cost of the call. *See also* 47 C.F.R. 64.703. Indeed, to date the Commission has not required that the operator service providers automatically provide a price disclosure for operator-assisted calls.

28/ RAY HORAK, COMMUNICATIONS, SYSTEMS & NETWORKS: VOICE DATA AND BROADBAND TECHNOLOGIES 144 (1997). With respect to PCS networks, SS7 is "an intrinsic element. In addition to improved call setup times, SS7 is the technology that will deliver enhanced features . . . ." *Id* at 357. As CTIA recently noted, the deployment of SS7 will also contribute to reducing leakage, and will "assist in fraud management and seamless roaming." *CTIA White Paper* at 13.

V. A NATIONAL REGULATORY STRUCTURE FOR CPP IS NECESSARY

The NOI requests comment on whether the Commission has the authority under section 332 to establish requirements regarding CPP arrangements between LECs and CMRS providers and on the scope of the Commission's jurisdiction under section 332 to establish nationwide rules for CPP.[29/] As shown below, the Commission has jurisdiction to adopt the requisite nationwide rules for CPP.

A. Subjecting CMRS Providers to Varying State Regulatory Regimes Would Render CPP Impracticable

Even after other issues have been resolved, CPP cannot be implemented if CMRS providers are subject to varying state regulations. Permitting states to impose regulations on the provision of CPP will create unsolvable practical problems, especially for traffic that has multiple jurisdictional components. Only national standards can prevent a patchwork of state regulations that would smother the development of CPP.

The problems associated with permitting state regulation of multi-jurisdictional services are particularly acute given the nature of CMRS licensing and coverage areas.[30/] The mobile nature of the service can cause a call that begins as "intrastate" to become "interstate" as one party crosses a state border during the call. Thus, determining what portion of a CMRS call is

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29/ NOI at ¶ 29.

30/ This problem is exacerbated by the Commission's new licensing regimes for PCS and SMR, in which most license areas include parts of two or more states. The MTA-wide "local" calling areas the Commission established for CMRS providers are typically very large regional areas encompassing parts of several states, so that CMRS providers often provide services with wide area interstate "local" calling areas.

"interstate" or "intrastate" in nature becomes an artificial and arbitrary process.[31/] At the same time it can be difficult to determine the state that has authority over a particular call and the locus of jurisdiction often could shift from one state to another.

Vanguard, for instance, holds a cellular license for the Huntington-Ashland, West Virginia-Ohio-Kentucky MSA, which includes parts of three states. Given the nature of wireless service, it is entirely possible for a customer with a Kentucky billing address to be receiving a call via a West Virginia cell site at a location in Ohio. In many cases, a cellular carrier with a multistate system may not be able to tell if a call crosses state boundaries because cellular carriers cannot determine the exact locations of their customers and landline callers in real time. Because it would be literally impossible to tell where the customer and caller are in many cases, it also would be *literally* impossible to determine which state's regulations govern a call to that customer. The problems associated with varying state regulations are especially apparent in the Washington, D.C. metropolitan area. For example, if Virginia were to impose a notification requirement and 1 + dialing, while Maryland required an intercept tone, it would be virtually impossible for cellular providers in the D.C. metropolitan area to offer CPP service without violating the requirements of one or both of these jurisdictions.

31/ In the context of the *Universal Service* proceeding, the Commission essentially acknowledged this in instructing CMRS providers to use a "best estimate" of interstate versus intrastate revenues in completing the Commission Universal Service worksheet. *See* Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-21, and Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 97-292, ¶ 21 (rel. August 15, 1997).

Thus, without appropriate action by the Commission it is likely that CMRS providers will not be able to provide CPP service in most, if not all, of their service areas. This is an unreasonable result and contrary to the congressional intent in creating the commercial mobile services regulatory classification.[32/] CPP is not a landline service and the mobile nature of CMRS must be taken into account in determining the appropriate regulatory approach for CPP. A logical approach, and one accurately reflecting the state of the law, would be to recognize explicitly CMRS (and thus the CPP service option) as a wholly interstate service.

B. States Do Not Have the Authority to Regulate CPP

While the Commission has the authority to adopt regulations governing CPP, the states do not. The states were divested of jurisdiction over rates and entry regulation by section 332, and thus may not attempt to regulate CPP. As section 332(c)(3)(A) states:

> Notwithstanding sections 2(b) and 221(b), no state or local governments shall have any authority to regulate the entry of or the rates charged by any commercial mobile service

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32/ Congress was well aware of the predominantly interstate nature of mobile radio transmissions as evidenced by the statement in the House Report on the 1993 Budget Act that "mobile services . . . *by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure*." H.R. Rep. No. 111, 103rd Cong. 1st Sess. 260 (1993). The Commission also acknowledged the predominantly interstate nature of CMRS services in its *LEC-CMRS Interconnection* proceeding. In the Notice of Proposed Rulemaking, the Commission found that "much of the LEC-CMRS traffic that may appear to be intrastate may actually be interstate, because CMRS service areas often cross state lines, and CMRS customers are mobile." Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, 11 FCC Rcd 5020, 5073 (1996). While the Commission determined that because of its interrelated nature that the CMRS-LEC interconnection rulemaking should ultimately be resolved as part of the Commission's implementation of LEC interconnection provisions contained in the 1996 Act, it did not question or reverse its previous jurisdictional tentative conclusions.

> or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.[33/]

Under the plain language of the statute, "other terms and conditions" do not apply to rates and pricing elements. According to the House Report on the 1993 Budget Act amendments, a state may regulate only those "other terms and conditions" that fall within the states's "lawful authority." The list of other terms and conditions contained in the legislative history and thus considered to be within a state's lawful authority include: "customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues (*e.g.*, zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis." [34/]

Review of the list of terms and conditions that fall within a state's lawful regulatory authority included in the House Report, *i.e.*, those that fall within a state's police powers, demonstrates that state-imposed CPP regulations on interstate wireless carriers do not fit within

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33/ 47 U.S.C. § 332(c)(3)(A). In addition, by amending section 2(b) to except out section 332 from the states' jurisdictional authority, Congress intended to create a uniform *federal* regulatory framework for CMRS. As the Conference Report on the 1993 Budget Act states, the amendment to section 2(b) was made to "clarify that the Commission has the authority to regulate commercial mobile services." H.R. Rep. No. 213, 103rd Cong., 1st Sess. 497 (1993). As part of the 1993 Budget Act, section 2(b) was revised to provide: "[e]xcept as provided in . . . *section 332*, . . . nothing in this chapter shall be construed to apply or to give the Commission jurisdiction over all charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . . ." 47 U.S.C. § 152(b) (emphasis added to 1993 Budget Act language addition).

34/ H.R. Rep. No. 111, 103rd Cong. 1st Sess. at 261.

the scope of a state's lawful regulatory authority.[35/] Moreover, regulation of CPP including state requirements for notification to callers, likely would constitute both rate and entry regulations in violation of section 332.[36/] Because state regulation would serve as an entry barrier, as described above, the Commission also could preempt such regulation under section 253.[37/]

The Commission's broad regulatory power over CMRS matters and the displacement of state jurisdiction recently have been confirmed by the Eighth Circuit Court of Appeals. While the Eighth Circuit's review of the *Local Competition Order* vacated key portions of the Commission's broader interconnection initiatives, the court specifically recognized the special nature of the Commission's jurisdiction over CMRS and confirmed the steps the Commission

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35/ While Vanguard recognizes that the *Arizona Decision* suggests that regulation of CPP was a billing practice that may be regulated by a State as a term or condition, that view does not take into account the interstate nature of CMRS services and the inherent need for a nationwide regulatory approach to CPP. *See* Petition of Arizona Corp. Comm'n to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services and Implementation of Sections 3(n) and 332 of the Communications Act, *Report and Order on Reconsideration*, 10 FCC Rcd 78247837 (1995). Indeed, as explained above, even the CPP billing mechanism is subject to federal section 251 requirements as an unbundled network element and state-imposed CPP regulations would serve to eliminate the ability of CMRS providers to offer CPP.

36/ Indeed, CTIA president Tom Wheeler recently expressed his concern over the possibility of state-imposed regulations that affect the rates prescribed by CMRS providers, noting that "[i]n an eventual CPP ruling, the Commission also needs to make sure that state commissions do not receive authority to regulate wireless carriers' rates." Continuing, Mr. Wheeler explained that "there is reason for such a concern because in a CPP situation, the wireless carrier would send bills to the LEC, which in turn is regulated by a state commission. A CPP order should not be a back-door to regulation of wireless carriers." *CTIA Sees Calling Party Pays Standard Coming in 1999*, MOBILE PHONE NEWS, September 29, 1997.

37/ 47 U.S.C. § 253.

had taken in the *Local Competition Order* that reflected the unique jurisdictional nature of CMRS.

Specifically, the court concluded that:

> [b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by . . . CMRS providers, *see* 47 U.S.C. §§ 152(b) (exempting the provisions of section 332, 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers.[38/]

Thus, the Eighth Circuit clearly confirms Commission jurisdiction over CMRS services.

VI. CONCLUSION

As demonstrated by the use of CPP internationally, the CPP service option facilitates local exchange competition by increasing the number of calls to cellular subscribers and increasing the overall use in the network. The availability of CPP will offer consumers lower prices and more choice in the telecommunications marketplace. Without appropriate action by the Commission to implement a uniform national regulatory regime for CPP, however, it is likely that CMRS providers will not be able to provide CPP service in most, if not all, of their service areas. Vanguard supports the Commission's initiative in the NOI and thus encourages

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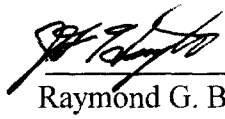
38/ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997). As a result of this holding, the court upheld the Commission's CMRS-specific rules relating to the scope of CMRS local calling areas, the prohibition of certain LEC-to-CMRS interconnection charges, the requirement that rates between LECs and CMRS providers be symmetrical, the ability of states to "true-up" local transport and termination charges once permanent rates are in place, and the Commission's rules governing the renegotiation of non-reciprocal LEC-to-CMRS interconnection agreements.

the Commission to work steadfastly towards implementing a national CPP regime for CMRS providers.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.



Raymond G. Bender, Jr.
J.G. Harrington
Laura S. Roecklein

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

December 16, 1997

Certificate of Service

I hereby certify that on this 16th day of December, 1997, I caused copies of Comments of Vanguard Cellular Systems, Inc. to be served upon the parties listed below via hand delivery:

Secretary
Federal Communications Commission
Washington, DC 20554

Mr. William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Commissioner Harold W. Furchgott-Roth
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

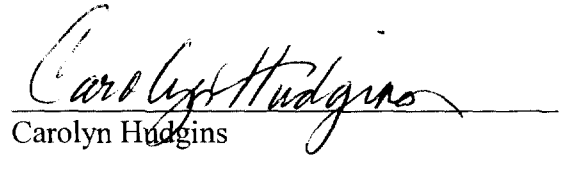
Commissioner Michael Powell
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, NW
Room 826
Washington, DC 20554

Daniel B. Phythyon, Chief
Wireless Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 5002
Washington, DC 20054

Pamela Megna
Wireless Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 7336
Washington, DC 20054

Dr. Joseph A. Levin
Wireless Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 7002-D
Washington, DC 20054



Carolyn Hudgins